

SERVICE DATE - OCTOBER 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-227 (Sub-No. 9X)

WHEELING AND LAKE ERIE RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN HARRISON AND JEFFERSON COUNTIES, OH

Decided: October 2, 2003

By decision served on October 19, 1999, Wheeling & Lake Erie Railway Company (W&LE) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its line of railroad known as the Valley Line, extending from milepost 188.5 near Unionvale to milepost 205.54 near Warrenton, a distance of approximately 18 miles in Jefferson and Harrison Counties, OH. The grant was subject to certain conditions,¹ including the condition that W&LE retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f).

By decision served on August 4, 2003, the Board reopened this proceeding and removed the section 106 historic preservation condition. The August 4 decision stated that a Memorandum of Agreement (MOA), designed to avoid or mitigate any adverse effects on historic properties resulting from the proposed abandonment, was executed by the Board and the Ohio Historic Preservation Office (SHPO). W&LE concurred in the MOA.

Once the historic preservation condition was removed, under 49 CFR 1152.29 (e)(2), W&LE would be required to consummate the abandonment within 60 days of the removal of the regulatory barrier to consummation, or by October 3, 2003. However, in a letter filed on September 25, 2003, W&LE states that the MOA requires that it provide certain recordation on Ohio Historic Inventory Forms, and that the SHPO then has 60 days to review and approve such documentation prior to the

¹ The decision also imposed the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and conditions that require W&LE: (1) to consult with the U.S. Department of Agriculture, Natural Resources Conservation Service to provide information required by that agency; and (2) remove all salvage operation debris from the right-of-way, streams or wetlands, or the banks of such waterways, and take appropriate measures to prevent or control spills from fuels, lubricants, or any other pollutants from entering water courses. Those conditions remain in effect.

abandonment and removal of the tracks. W&LE further states that review and approval of the documentation requirement process is ongoing, and will not be completed by the October 3, 2003 deadline. W&LE therefore requests an extension of the consummation deadline until 60 days after satisfaction of the pre-abandonment requirements of the MOA.

W&LE has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation in this proceeding. Accordingly, the request will be granted.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. W&LE's request for an extension of time to exercise the abandonment authority is granted.
2. The authority to abandon must be exercised, and the notice of consummation must be filed, no later than 60 days after satisfaction of the pre-abandonment requirements imposed in the MOA.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary